

# **SCHEDULE OF CIVIL PENALTIES**

**TITLE 410 IAC 7-23**

**INDIANA STATE DEPARTMENT  
OF HEALTH**

**Effective January 4, 2004**

Indiana State Department of Health  
2 North Meridian Street  
Indianapolis, IN 46204

# Preface

In 2001 the Indiana General Assembly enacted Senate Bill 404 to provide additional statutory authority and clarify other statutes for the Indiana State Department of Health. Heretofore, the Indiana State Department of Health could assess civil penalties only for adulterated food products. Senate Bill 404 adds Indiana Code 16-19-3-4 and IC 16-42-5-28 that gives the department authority to promulgate rules establishing civil penalties for any type of food violation. The new law also gives all local health departments authority to assess civil penalties in local enforcement actions against violators of food law.

Local health departments are prohibited from establishing separate civil penalties once this rule becomes effective. This rule was developed in close cooperation with the food industry and local health departments. For any violation listed under the schedule, the regulatory authority may seek civil penalties as part of an enforcement action. A range of civil penalties is established to allow flexibility for the health authority and the courts.

It is anticipated that having the ability to seek civil penalties will assist with the enforcement of recalcitrant violators of food law and will provide further protection against the spread of foodborne disease. It should be noted that violations of food law that have a higher public health significance are assigned a broader range of potential civil penalties with a maximum of \$1,000. These violations, if left uncorrected, have a much higher probability of causing illness or injury to the public. The ability to seek civil penalties should assure better compliance, and better protection for consumers against foodborne disease.

# **TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH**

## **LSA Document #02-317**

### **Proposed Rule**

#### **DIGEST**

Adds 410 IAC 7-23 to establish a schedule of civil penalties for violations of the retail and wholesale food establishment rules and Indiana Code 16-42-5. Repeals 410 IAC 7-19-1. Effective 30 days after filing with the secretary of state.

#### **410 IAC 7-23**

**SECTION 1. 410 IAC 7-23-1 IS ADDED TO READ AS FOLLOWS:**

410 IAC 7-23-1      Schedule of civil penalties  
    Authority:      IC 16-19-3-4; IC 16-42-5-28  
    Affected:      IC 4-21.5-3-8

Sec. 1. (a) The Indiana state department of health may commence an action under IC 4-21.5-3-8 to levy civil penalties against a person who:

- (1) fails to comply with IC 16-42-5, 410 IAC 7-20 or 410 IAC 7-21; or
- (2) interferes with or obstructs the Indiana state department of health or its designated agent in the performance of duties pursuant to IC 16-42-5, 410 IAC 7-20, or 410 IAC 7-21.

(b) A civil penalty in an amount in the appropriate range specified in subsection (d), (e), or (f) or any combination thereof, may be sought for each day of each violation.

(c) In determining the seriousness of the violation and the specific amount of the civil penalty to be sought for each violation, the Indiana state department of health will consider, but is not limited to, the following:

- (1) The potential for harm or imminent threat to public health.
- (2) The extent of deviation from statutory or regulatory requirements
- (3) Degree of willfulness or negligence.
- (4) History of noncompliance.

The absence of direct harm will not result in assessment of a lower penalty for a violation.

(d) For a food establishment as defined in IC 16-42-5, unless adjusted in accordance with subsections (g) through (j), a penalty shall be assessed for each violation in accordance with the following table:

INDIANA CODE 16-42-5	PENALTY RANGE
IC16-42-5-6; IC16-42-5-11; IC16-42-5-19; IC16-42-5-21	\$0 to \$1,000
IC16-42-5-7; IC16-42-5-12; IC16-42-5-13; IC16-42-5-14; IC16-42-5-15; IC16-42-5-17; IC16-42-5-18; IC16-42-5-20	\$0 to \$500
IC16-42-5-8; IC16-42-5-9; IC16-42-5-10; IC16-42-5-16; IC16-42-5-22	\$0 to \$100

(e) For a retail food establishment as defined in 410 IAC 7-20, unless adjusted in accordance with subsections (g) through (j), a penalty shall be assessed for each violation in accordance with the following table:

SECTION of 410 IAC 7-20	PENALTY RANGE
98; 107; 117; 118; 124; 136; 161; 340; 382; 427;	\$0 - \$500
94; 97; 114; 119; 120; 121; 122; 123; 125; 126; 127; 128; 129; 130; 132; 135; 137; 138; 140; 141; 158(a); 162; 163; 164; 167; 171; 173; 175; 177; 180; 181; 182(d); 183; 184; 254; 257; 261; 276; 291; 292; 293; 297; 301; 302; 304; 307; 308; 310; 311; 315; 317; 318(1); 335; 337; 402; 407; 408; 409; 410; 411; 412; 413; 414; 415; 416; 417; 418; 420; 428; 429; 430; 431	\$0 - \$250
95; 100; 105; 106; 109; 112; 113; 116; 131; 159; 160; 172; 174; 182(a); 182(b); 182(c); 195; 198; 219; 232; 264(a); 265; 275; 294; 329; 383; 406;	\$0 - \$100
96; 99; 108; 110; 111; 115; 133; 134; 139; 142; 143; 144; 146; 147; 148; 149; 150; 151; 152; 153; 154; 155; 156; 157; 158(b); 158(c); 165; 166; 168; 169; 170; 178; 179; 185; 186; 187; 188; 189; 190; 191; 192; 193; 194; 196; 197; 199; 200; 201; 202; 203; 204; 205; 206; 207; 208; 209; 210; 211; 212; 213; 214; 215; 216; 217; 218; 220; 221; 222; 223; 224; 225; 226; 227; 228; 229; 230; 233; 234; 235; 236; 237; 238; 239; 240; 241; 242; 243; 244; 245; 247; 248; 249; 250; 251; 252; 253; 255; 256; 258; 259; 260; 262; 263; 264(b); 264(c); 266; 267; 268; 269; 270; 271; 272; 273; 274; 277; 278; 279; 280; 281; 282; 283; 284; 285; 286; 287; 288; 289; 290; 295; 296; 298; 299; 300; 303; 305; 306; 309; 312; 313; 314; 316; 318(2); 319; 320; 321; 322; 323; 324; 325; 326; 327; 328; 330; 332; 333; 336; 338; 339; 341;	\$0 - \$50

342; 343; 344; 345; 346; 347; 348; 349; 350; 351; 352; 353; 354; 355; 356; 357; 358; 359; 360; 361; 362; 363; 364; 365; 366; 367; 368; 369; 370; 371; 372; 373; 374; 375; 376; 377; 378; 379; 380; 381; 384; 385; 386; 387; 388; 389; 390; 391; 392; 393; 394; 395; 396; 397; 398; 399; 400; 401; 403; 404; 405; 419; 421; 422; 423; 425;	
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(f) For a wholesale food establishment as defined in 410 IAC 7-21, unless adjusted in accordance with subsections (g) through (j), a penalty shall be assessed for each violation in accordance with the following table:

SECTION of 410 IAC 7-21	PENALTY RANGE
35; 36(1); 36(2); 36(3); 36(4); 36(5); 39(b)(8); 40; 41; 42(b); 45(c); 45(n); 45(p); 45(q); 45(r); 46; 47(9)(B); 48; 49(d); 49(e); 50(d)	\$0 - \$1,000
36(8); 37; 38; 39(a); 39(b)(1); 39(b)(2); 39(b)(3); 39(b)(4); 39(b)(5); 39(b)(6); 39(b)(7); 42(a); 42(d); 42(e); 44(i); 45(a); 45(b); 45(d); 45(e); 45(f); 45(g); 45(h); 45(i); 45(j); 45(k); 45(l); 45(m); 45(o); 45(s); 47(2); 47(3); 47(4); 47(5); 47(6); 47(7); 47(9)(a); 47(9)(c); 50(c); 50(f); 51(a); 51(c); 51(d)	\$0 - \$500
36(6); 36(7); 42(c); 43(b); 43(c); 43(d); 44(c); 44(e); 44(h); 47(1)(A); 47(1); 47(8); 49(a); 49(b); 49(c); 50(b); 51(b);	\$0 - \$250
36 (9); 43(a); 43(e); 44(a); 44(b); 44(d); 44(f); 44(g); 45(t); 47(10); 47(11); 47(12); 47(13); 47(14); 47(15);	\$0 - \$100

(g) Each individual penalty assessed under subsection (d), (e) or (f), or any combination thereof, will be multiplied by the number of days the particular violation has been documented by the Indiana state department of health, or its authorized representative.

(h) Penalties for violations documented in two (2) consecutive inspections by the Indiana state department of health, or its authorized representative, shall be assessed on the basis that the violations have remained uncorrected over the period of time between the two (2) inspections.

(i) The Indiana state department of health, or its authorized representative, may reduce the penalty determined in accordance with subsections (d), (e), or (f), or any combination thereof, if the person found in violation has requested re-inspection and has produced substantive evidence that violation(s) have been corrected. In that case the penalty amount shall be assessed only for the period between initial discovery of the violation and the date of receipt of the request for re-inspection.

(j) Penalties for all violations documented in an inspection or series of inspections at an establishment will be totaled and sought in one (1) cause of action.

(k) After filing an action pursuant to IC 4-21.5, and in an attempt to resolve violations of IC 16-42-5, 410 IAC 7-20, or 410 IAC 7-21 without resort to a hearing, the Indiana state department of health, or its authorized representative, may negotiate and enter into agreed orders. An agreed order may suspend all or part of the civil penalty calculated in accordance with this rule. (*Indiana State Department of Health; 410 IAC 7-23-1*)

**SECTION 2. 410 IAC 7-19-1 IS REPEALED.**